IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.149 OF 2007

Mr. Vajidali T. Kadri,)
Bhadangoura, Near Dharavi,)
Dharangaon, Tal. Erandol, Dist.)
Jalgaon.) ... Appellant

Versus

M/s. D.D. Shah & Co.,)
having office at Damodar Bldg., 105,)
Princess Street, Mumbai – 400 002.) ... Respondent

Mr. S.N. Deshpande for the appellant.

Mr. A.K. Jalisatgi for the respondent.

CORAM : SWATANTER KUMAR, C.J. &
SMT. RANJANA DESAI, J.

DATE ON WHICH THE JUDGMENT RESERVED : 9TH JULY, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 16TH AUGUST, 2007.

JUDGEMENT:- (Per Smt. Ranjana Desai, J.)

1. The appellant was employed by the respondents as the security-in-charge of their factory. The respondents dismissed him

from service vide letter dated 27/9/1990. The appellant filed Complaint (ULP) No.6 of 1991 in the IInd Labour Court, Thane, challenging the respondents' action. In the complaint, it is his case that the respondents have indulged in unfair labour practices under items 1(a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (for short, "the MRTU & PULP Act"). According to the appellant, he was discharged without conducting any inquiry in utter disregard to the principles of natural justice. No charge-sheet was served on him. It is his case that the respondents have discharged/dismissed him by way of victimization, not in good faith but in colourable exercise of the employer's rights for patently false reasons.

2. Admittedly, no charge-sheet was served on the appellant. The particulars of misconduct were given by the respondents in their written statement. The respondents examined their witnesses in support of their case. In the light of the judgment of the Supreme Court in ***Firestone Tyre & Rubber Co. of India Pvt. Ltd.***

v. Workmen, 1981 II LLJ 218, and judgment of this court in ***Madhukar Mahadik v. Indian Express News Papers Pvt. Ltd., 1992 1 CLR 1001***, the Labour Court held that where no enquiry is held or the enquiry held is not proper, the management can be permitted to lead evidence to justify its action. The Labour Court, therefore, considered the evidence led by the respondents and came to a conclusion that the respondents had proved misconduct of the appellant and, therefore, the termination of the appellant was justified. Recording its conclusion that the respondents have not committed unfair labour practice, the Labour Court dismissed the complaint.

3. The appellant challenged the said order in the Industrial Court at Thane vide Revision Application (ULP) No.38 of 2005. By order dated 21/3/2006, the Industrial Court allowed the revision application. It set aside the order dated 10/12/2004 passed by the Labour Court, Thane, by observing that since no show cause notice was issued to the appellant and no inquiry was held, the Labour Court could not have allowed the respondents to lead

evidence to justify their action. In the opinion of the Industrial Court, the termination of the services of the appellant was illegal because it was done with undue haste in colourable exercise of rights of the respondent-employer. According to the Industrial Court, it resulted in victimization of the appellant. According to the Industrial Court the respondents had indulged in unfair labour practice prescribed under Item 1 of Schedule IV of the MRTU & PULP Act. In the circumstances, the Industrial Court set aside the termination order dated 27/9/1990 issued by the respondents and directed the respondents to pay 50% of back wages to the appellant till 7/10/2000 with continuity in service till then along with all other legal dues. In the writ petition, this order was challenged by the respondents.

4. By the impugned order, the learned Single Judge set aside the order of the Industrial Court and remanded the matter to the Industrial Court for disposal in accordance with law. The said order is challenged in the instant letters patent appeal.

5. The learned counsel for the appellant contended that the Labour Court could not have allowed the respondents to lead evidence in the court in the absence of any charge-sheet or departmental enquiry. He submitted that the learned Single Judge failed to appreciate that the present case was completely covered by the judgments of this court in (i) ***Theatere Employees Union v. S.P. Kotnis & Ors., 1992 I CLR, 474,*** (ii) ***Wai Taluka Sahakari Kharedi Vikri Sangh Ltd., Satara v. Bajirao Mahadeo Mahadik, 1992 I CLR 637*** and (iii) ***Bank Karmachari Sangh, Pune v. Cosmos Co-operative Urban Bank Ltd. & Ors., 1998 II LLJ 372.*** He submitted that the unreported judgment of the Division Bench of this court (P.S. Patankar & T.K. Chandrashekhara Das, JJ.) in ***The Cosmos Urban Co-operative Bank Ltd. v. Bank Karmachari Sangh & Ors. in Letters Patent Appeal No.57 of 1998 and Letters Patent Appeal No.72 of 1998 decided on 4/5/2001*** does not help the respondents because the point of law decided by the three judgments cited by the appellant is not disturbed by the said judgment. He submitted that the Division Bench has merely said that in its opinion, the case with which it was dealing was a fit case

where the employer could have given an opportunity to justify his action taken against the workmen. He submitted that in that case, the workmen were aware about the charges levelled against them and there was documentary evidence also. It is in this context that the Division Bench found that it was a fit case in which the management could have been allowed to lead evidence in the court. That case has, therefore, no application to the present case. The learned counsel contended that the learned Single Judge has failed to appreciate the question of law which was posed for consideration. He submitted that none of the judgments relied upon by the learned Judge have decided whether in the absence of any charge-sheet or any specific allegation in the dismissal order, the employer can be allowed to lead evidence in the court in support of allegations first time made in the written statement against the workman. The learned counsel contended that very serious consequences will follow if the management is allowed to lead evidence first time in the court without any charge-sheet being issued to the workmen and without there being any allegation in the termination order. He submitted that if such a

course is adopted, that will lead to re-introduction of hire and fire law. In the circumstances, according to the learned counsel, the impugned order must be set aside.

6. It is necessary for us to first refer to the judgments cited by the appellant's counsel. In ***Theatre Employees' Union's case (supra)***, the workmen were dismissed from service without service of show cause notice or holding any inquiry. A reference was made by the Deputy Commissioner of Labour to the Labour Court at Bombay upon receipt of failure report of the Conciliation Officer. The Labour Court accepted the employer's stand that misconduct of the workmen was established in view of the statements given by them. The Labour Court thus dismissed the reference. Being aggrieved by this action, the Union filed a petition in this court. This court observed that the employer had played a fast trick on the employees in securing their statements. This court did not accept the employer's stand that services of the workmen were terminated due to loss of confidence. This court observed that the act of the employer in leading evidence before the Labour

Court to establish misconduct was totally erroneous and the Labour Court should not have permitted such exercise. The award of the Labour Court was thus set aside.

7. In ***Wai Taluka Sahakari Kharel Vikri Sangh Ltd.'s case (supra)***, by a resolution, the society resolved that the workman's work was unsatisfactory and that the society did not need his services. Pursuant to the resolution, the services of the workman were terminated. The workman raised a demand for reinstatement in service. The dispute was referred for adjudication to the Labour Court. Before the Labour Court, the petitioner-society had to accept that the employment of the workman had been terminated without resorting to any disciplinary procedure as there was not even a charge-sheet filed against the workman much less any explanation sought for his alleged misconduct or unsatisfactory services. The petitioner-society persuaded the Labour Court to permit it to lead evidence to prove the unsatisfactory nature of the workman's services. The Labour Court allowed the petitioner-society to frame a charge-sheet. The parties led evidence. The

learned Judge came to the conclusion that the order of termination of services of the workman was illegal and improper and deserved to be set aside. The order of termination came to be set aside. That award was challenged by the petitioner-society in this court.

8. Though this court was of the view that the termination order was rightly set aside as no material was produced on record by the petitioner-society to establish any of the allegations made in the charge-sheet, this court went on to hold that the Labour Court could not have permitted the petitioner-society to lead evidence. This court observed that such a course was wholly impermissible. This court clarified that only if there is any charge-sheet in existence with respect to which a defective inquiry has been held, that the liberty to satisfy the Tribunal upon material in support of the charge-sheet could be exercised. This court made it clear that it is no function of the adjudicating Tribunal to frame the charges suo moto or at the instance of the employer.

9. In ***Bank Karmachari Sangh's case (supra),*** the petitioner-

Trade Union, espousing the cause of its members, who were employees of the first respondent-bank filed a writ petition challenging orders of the Industrial Court by which their complaint of unfair labour practice against the first respondent-bank was held not maintainable. It was held that the alleged unfair labour practice of the first respondent in terminating the services of the workmen was not proved. This court set aside the Industrial Court's order. Relying on its judgment in ***Wai Taluka Sahakari Kharel Vikri Sangh Ltd.'s case (supra),*** this court held that if the services of the workmen had been terminated on account of misconduct, then the orders of termination have been passed by way of punishment and, therefore, it was necessary for the management to observe the rules of natural justice before terminating the services of the employees. Since no charge-sheet was issued, it cannot be held that the management had observed the rules of natural justice while issuing the orders of termination. Referring to the Standing Order Nos.21 and 22, which described what acts constitute misconduct and which provided punishment for it, this court held that these punishments cannot be given without holding a

departmental inquiry and since there was no charge-sheet, the Industrial Court was clearly in error in permitting the management to adduce evidence for the first time in court in support of the action of the employer. In view of this, relief of reinstatement was declined to the workmen.

10. Letters patent appeals were carried by both sides to the Division Bench of this court and the Division Bench by its order dated 4/5/2001 in L.P.A. No.57 of 1998 and L.P.A. No.72 of 1998 held that the view taken by the learned Single Judge was wrong. The Division Bench observed that the Industrial Court refused the amendment and denied opportunity to the employer to justify its action. The Division Bench observed that it was a fit case where the employer could have been given an opportunity to justify the action taken against the workmen. Thus, the Division Bench accepted that opportunity can be given to the employer to justify his action. The learned counsel for the appellant tried to distinguish this judgment on facts. We, however, feel that it is not necessary for us to go into this because, in our opinion, the

Supreme Court has clarified the legal position putting all doubts to rest. We must refer to those judgments to which our attention is drawn by the learned counsel for the respondents. Some of them have also been referred to by the learned Single Judge.

11. In ***Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation and Anr., AIR 1960 SC 160***, the Supreme Court observed as under :

> *"But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved, and if yes, what would be proper order to make."*

12. In ***Delhi Cloth and General Mills Co. v. Ludh Budh Singh, AIR 1972 SC 1831***, the Supreme Court has observed as under :

> *"(I) if no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is*

> *entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it."*

13. In ***The Workmen of M/s. Firestone Tyre & Rubber Co. of India Pvt. Ltd. v. The Management & Ors., AIR 1973 SC 1227***, the Supreme Court reiterated the same view. The Supreme Court was, inter alia, considering whether section 11-A of the Industrial Disputes Act has made any change in the legal position. The Supreme Court observed that the right in the management to sustain its order by adducing independent evidence before the Tribunal if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years and it has not been disturbed by section 11-A.

14. In ***Kamal Kishore Lakshman v. The Management of M/s. Pan American World Airways Inc. & Ors. 1987 I LLJ SC 107***, the Supreme Court has reaffirmed that the legal position firmly

established is that if there has been no appropriate domestic enquiry or no enquiry at all before disciplinary action is taken it is open to the employer to ask for such opportunity in the course of adjudication before the Labour Court.

15. In view of the above judgments, the appellant's contention that the learned Single Judge has erred in holding that the management can adduce evidence before the Labour Court must be rejected. Reliance placed by the appellant on the judgments of this court which take a contrary view is wholly misplaced. We concur with the learned Single Judge that even in a case where no inquiry was held prior to dismissal of the employee, the employer's right to justify the action by leading necessary evidence in support of such action for the first time before the Labour Court remains unaffected.

16. In our opinion, therefore, there is no substance in the instant letters patent appeal. It is accordingly dismissed.

[CHIEF JUSTICE]

[SMT. RANJANA DESAI, J.]